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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 67

ABRAHAM BRAUNFELD, ISAAC FRIEDMAN, ALTER DIAMENT, S. DAVID FRIEDMAN and JOSEPH R. FRIEDMAN,

Appellants,

v.

THOMAS J. GIBBONS, Commissioner of Police of the City of Philadelphia, and VICTOR H. BLANC, District Attorney of the City of Philadelphia,

Appellees.

BRIEF OF AMICUS CURIAE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

I. INTEREST OF THE AMICUS CURIAE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

This amicus curiae brief is submitted by the Retail Clerks International Association, AFL-CIO, with the written consent of all parties.

The Retail Clerks International Association (hereafter referred to as the Association) is a labor organization whose 350,000 members are employed in retail

stores throughout the United States. Many thousands of its members are employed by retail establishments in the Commonwealth of Pennsylvania and are affected immediately by the statutes under consideration. The Association represents its members in collective bargaining relations with retail employers.

Founded in 1888, one of the major purposes of the Association has been to secure relief from the oppression of the seven day work week in the retail industry. This purpose has continued over the years and remains an important purpose of the Association. Section 3(H) of the Association's Constitution of 1959 declares this principle in these terms:

> "We proclaim that Sunday should be a day of rest. Accordingly, we shall undertake to educate our members, employers, and the consuming public to recognize and accept the fact that store operations on Sunday are not necessary. Where laws exist prohibiting Sunday work, they should be rigidly enforced."

The members of the Association are adherents of all major religious faiths. From its origin in the 1880's, the Association has viewed Sunday store closing as a desirable social policy, regardless of any religious significance which this day may have for adherents of certain religious faiths. The Association cherishes our constitutional protections of religious freedom and of minority rights.

Finally, the Association wishes to make clear that it has intervened in this case—rather than in any of the companion cases—because intervention in this case was readily consented to by the parties. It is believed, however, that the views expressed herein are generally

applicable to all four of the "Sunday closing" law cases before the Court.

II. SUMMARY OF THE ARGUMENT

Day of rest laws are an important part of any scheme of legislation designed to protect the health and morals of American working men and women. The social desideratum of creating one uniform day of rest for all workers in a community has been recognized not only by most states of the United States but also by most of the democratic nations of the world. This desideratum has been adopted by a convention of the International Labor Organization (ILO).

State legislation granting such protection to retail employees is of particular importance, because the federal Fair Labor Standards Act exempts retail industry employees from its coverage. Thus, in the absence of federal protection, retail workers—many of whom do not yet enjoy the benefits of collective bargaining—stand in critical need of the minimum protection of state, Sunday closing legislation.

Social scientists and students of community problems regard a uniform, community-wide day of rest as an important social cohesion which strengthens both family and community ties. Where working schedules are such that the worker is deprived of the opportunity to share leisure time in common with his family and with his community, the social consequences are patently harmful. Irregular working hours are related to social problems of various types, including the high divorce rate, juvenile delinquency, and lack of participation in community affairs.

A most severe challenge to the desideratum of a uniform, community day of rest lies in the expanding

retail industry. Because federal legislation and collective bargaining contracts have created whole weekends of leisure for most American workers, weekends have become particularly important shopping days. In the fiercely competitive retail industry, the inevitable economic consequence has been that many giant retail enterprises seek to operate seven days a week. This challenge has been intensified in recent years with the exodus of the population to the suburbs and the growth of suburban shopping centers.

These social problems are the legitimate concern of state legislatures. By enacting "Sunday closing" laws, state legislatures have made a valuable contribution to the psychological and physical welfare of their citizens and to the strength of the family and the community.[1]

III. THE ARGUMENT

A. A Community Day of Rest Has Long Been Recognized as an Invaluable Social Objective by American Workers, Regardless of Religious Considerations. In American Society, Sunday is a Unique and Exemplary Day

Seventy-five years ago, this Court observed that "Sunday closing" laws are "beneficient and merciful" because they "protect all persons from the physical and moral debasement which comes from uninterrupted labor." *Soon Hing* v. *Crowley*, 113 U.S. 703, 710 (1885). At approximately the same time, *amicus curiae* Retail Clerks International Association, AFL-CIO, was founded by retail store clerks who engaged in concerted action to end the seven day work week

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[1] Counsel for *amicus curiae* wish to acknowledge the assistance of Dr. Lewis A. Coser, Professor of Sociology at Brandeis University, in the preparation of this brief, particularly in connection with the sociological problems discussed herein.

in retailing. (See Kirstein, *Stores and Unions*, Fairchild Pub., Inc., N.Y. 1950, pp. 15-24). In the 1890's local unions chartered by the Retail Clerks International Association sponsored "Sunday closing" laws in many communities. *Ibid*, pp. 20-21. Notwithstanding the fact that certain religious groups also favored these laws for reasons of their own, the Association's only interest has been social and economic.

While the forty hour week has become fairly common in the unionized sector of the retail industry, many millions of retail workers—mostly women—do not yet enjoy the benefits of collective bargaining. These employees, protected neither by the federal Fair Labor Standards Act[2] nor union contracts, are still subject to long hours of toil for notoriously low wages.

Other retail employees, who enjoy a forty hour week and collectively bargained working conditions, are deprived of priceless opportunities to participate in family and community activities when they are required to work on Sunday, because this is the single day of the week when members of the family and the community share leisure time.

In American society, Sunday is not just another day. Whatever the reasons historically and culturally, Sunday is a special day in the life of almost every American—regardless of his religion. Its unique importance has been memoralized in drama, novels and poetry. Sunday is the one day of the week when television programs of a superior quality are available in such areas as public affairs, music and literature. Sunday is also the day when that popular phenomenon,

[2] Retail employees are exempted from the protective coverage of the Fair Labor Standards Act. 29 USC Sec. 213.

the "Sunday driver," roams the highways with his family. Schools, courts, post offices, and most other public offices are closed. Sunday is also a special day for parades, picnics, political meetings, double-header baseball games, concerts, family reunions, gigantic newspapers and many other familiar—invaluable—institutions.

Therefore, the Association respectfully submits that state "Sunday closing" statutes have properly taken cognizance of the social importance of this unique day in American society and have made invaluable opportunities available to America's millions of retail employees. These laws help to strengthen—not weaken—social democracy in America.

B. Throughout the World, Democratic Nations Have Guaranteed Workers a Day of Rest as a Feature of Social Welfare Legislation

Day of rest statutes are to be found in the protective legislation of most of the world's democratic nations. An official publication of the International Labor Organization (ILO) sketches the background of day of rest legislation: (*Weekly Rest in Commerce and Offices*, International Labor Conference, 39th Session, 1956, Report VII (1) Geneva, 1955, p. 3.)

> "It is a practice which is deeply rooted in the customs of all peoples independently of their degree of economic and social development. *Quite often the practice originated as a religious observance and developed into a tradition which has persisted despite the disappearance of the original reasons or the decline in the part played by religious institutions in the social structure.* Labor legislation has endeavored to maintain and extend this practice in the light of the economic needs of modern society. . . ." (Emphasis added.)

Almost all nations have some kind of legislation guaranteeing the worker's right to a day of rest. A number of national constitutions specifically mention this basic "right" of workers. In many other countries, regulations dealing with weekly rest are incorporated into general social legislation.

The I.L.O. report on *Weekly Rest in Commerce and Offices* also sets forth the important policy considerations underlying day of rest laws: (*Ibid*, pp. 3-6)

> "A number of countries have . . . legislative provisions which relate exclusively to the workers' weekly rest. In some countries legislation deals particularly with the weekly rest in commerce and offices or in certain classes of establishments. These provisions are based upon recognition of the fact that a weekly rest for the worker, like any other form of rest, meets physiological, psychological, social and economic needs, which become greater with the development of production in its modern forms. Physiologically and psychologically, rest is necessary to renew and restore worker's physical strength and also his mental functions, and to make for the greater safety both of the workers in and of the persons served by certain types of establishments. Socially it gives him more time for family and community life. From the economic point of view, it is necessary if he is to maintain his individual output, which is an essential element in production. Legislation based on these considerations was first introduced at the beginning of the century in Belgium, France and Spain. Other countries which later adopted such legislation included Argentina, Australia, Bolivia, Canada, Colombia, Czechoslovakia, Greece, India, Italy, New Zealand, Poland, the Saar, El Salvador, Switzerland, Tunisia, Turkey, the United States and Uruguay."

This, legislation designed to insure that workers may enjoy one day of rest each week is by no means limited to the United States.

The International Labor Organization, meeting in Geneva in 1957, unanimously adopted a "Weekly Rest Convention" with the concurrence of American representatives of labor, employer and government organizations. Article 6 of this convention reads as follows: (Record of Proceedings, International Labor Conference, 1957, Geneva, 1958 pp 794-801.)

> "1. All persons to whom this convention applies shall, except as otherwise provided, be entitled to an uninterrupted weekly rest period comprising no less than 24 hours in the course of each period of 7 days.
>
> "2. The weekly rest period shall, whenever possible, be granted simultaneously to all persons concerned in each establishment.
>
> "3. *The weekly rest period shall, whenever possible, coincide with the day of the week established as a day of rest by the traditions or customs of the community or district.* (Emphasis added.)
>
> "4. The traditions and customs of religious minorities shall, as far as possible, be respected."

Civilized nations throughout the world, therefore, have recognized not only the importance of a day of rest for workers but they have also recognized that the day of rest should be the day "established as a day of rest by the traditions or customs of the community." In America, custom and tradition have undeniably established Sunday as the uniform day of rest. In view of this nearly unanimous agreement of the nations of the world that such laws make an important contribution

to the welfare of their citizens, it is respectfully submitted that state legislatures which enact day of rest statutes act in the public interest and for the welfare of all.

C. A Community Day of Rest is an Incomparable Social Cohesion. It Makes a Positive Contribution to the Health of the Worker, the Family and the Community. It Helps to Minimize Such Social Evils as High Divorce Rates and Juvenile Delinquency

1. The Exodus to the Suburbs and Other Pressures of Modern Society Have Intensified a Need for a Community Day of Rest.

It is axiomatic that, to create a socially healthy community, its citizens must enjoy a stable family life and the time and opportunity to participate in the web of associations which draws the community together. Because modern industrial society pulls its citizens apart during their working hours, it is essential that there be common, non-work periods when citizens can jointly pursue social, political, cultural, recreational and educational interests.

A democratic community must depend on the active participation of citizens in community affairs. The community, through government, however, has a moral duty to maximize the opportunities for such participation. On work days, the very nature of the work process usually makes it impossible for the worker to concern himself with community affairs.

The rush toward the suburbs has been one of the most significant social developments of the last twenty years. This trend has had social consequences of great magnitude, some of which are directly related to the case at bar. As the distance between dwelling place and working place increases, the allegiance of the typical com-

muter has become divided between these two distinct communities. The individual's relationship to each of these communities may be fragmentary, because each community has meaning for only one side of his life.

From the point of view of the individual, where and how can he be an effective citizen in these circumstances? The community where he works is of very limited importance to the worker who lives in the suburbs, because he does not look to his working community to satisfy the educational, police and other civic needs of his family. On the other hand, if the suburban home community is merely a "dormitory community," its inhabitants will be forced into a pattern of fragmentary citizenship. The suburbanite may have two communities but be a meaningful citizen of neither.

Under these circumstances of urban-industrial life, can it be said that a state legislature has exceeded the limits of the federal constitution by assuring, legislatively, that Sunday work schedules do not deprive inhabitants of the suburbs of the opportunity to identify themselves with local community life? Is it not in the public interest that legislatures have set aside one day during which citizens are freed from commitments to their working place and can devote themselves to the affairs of their family and their home community?

Sociologists are in broad agreement that so-called primary groups (i.e., groups involving intimate face-to-face contact, in particular the family and the neighborhood group) are fundamental in forming the social personality and ideals of the individual. In such groups there is a mutual identification and a "we" feeling not to be found in other relationships. (See Cooley, *Social Organization*, Chas. Scribner & Sons,

1909). Primary ideals of life, such as love, justice, fair play and good will, do not come to most citizens from abstract philosophy or from solitary living: they come basically from family and local community life, and they are reinforced daily in primary group experience. If the strength of primary groups is eroded by the pressures of mass society, the potential consequences could be anti-social. To the extent that Sunday work disrupts family, community and primary group experiences, it contributes to the weakening of the social values of our society.

2. Sociological Studies Show That Irregular Work Schedules Undermine the Worker, His Family and His Community. The Problems of Irregular Work Schedules Are Intensified Because of the Increase of Women in the Labor Force.

Several sociological studies have illustrated in recent years the detrimental effects of irregular work schedules, such as rotating shifts or night shifts, on the life of industrial workers. In an article entitled "A New Look at the New Leisure," Edwin Blakeloe makes this observtaion: (Administrative Science Quarterly, March 1960 IV, 4.)

> ". . . consider a worker on shifts that are changed approximately once a week (a typical schedule of rotation). Thinking of a pattern of his life over a period of several months, one sees his 'week-end' move slowly through the week, while his work 'day' changes from morning to afternoon to night."

A comparison by Blakeloe, *Ibid*, of 134 shift and 160 non-shift workers in an oil refinery showed the former to have a distinctly reduced range of organizational membership. They had less chance to achieve leadership positions; they held office less often; they attended

meetings less frequently; they belonged to fewer organizations and clubs. They visited less frequently with friends and fellow workers.

Professor Daniel Bell, in *Work and Its Discontents* (Boston, Beacon Press, 1956, p. 52), says:

> "... more and more workers may find themselves working 'out of hours.' In such work communities, the rhythms of sleeping, eating, social and *sexual* life become skewed. A man on the regular eight-to-four shift follows a cycle of *work*, *recreation* and *sleep*, while during the same day the fellow on the four-to-twelve shift is on a cycle of *recreation*, *work* and *sleep*, while the night man goes through his twenty-four hours in *sleep*, *recreation*, and *work*. Where this occurs, friendship-patterns may change abruptly."

Paul and Faith Pigors, in their study *Human Aspects of Multiple Shift Operation* (Massachusetts Institute of Technology, Cambridge, Mass., 1944, pp. 26-27), make these observations on the effects of "afternoon shifts":

> "Most employees on second shift schedules acknowledge that recreation is 'out' and it is for this reason that the second shift is so objectionable. The degree of dislike occasioned by the necessary realignment depends on particular needs for synchronizing one's activities with the normal daily rhythm of other people's lives ... They now have to live on a schedule difficult for any individual to adjust to and practically impossible to synchronize with the rhythm of normal family life ... This topsy-turvy existence is hard on all but the most solitary and independent persons, since the day begins with leisure and ends with work."

Professor William Cottrell in his study of *The Railroader* (Stanford University Press, 1940) shows how the life and personality of the operating railroad worker is drastically influenced by the special work schedule he must observe. Says Cottrell: (*Ibid*, pp. 73-74, and 77.)

> "Membership in any organization with regular meetings is difficult to maintain and the socializing effect of such contacts is lost . . . Civic participation is rendered difficult. No membership on governing boards is feasible, and promised aid in community service may be impossible to render . . . Family life is greatly affected. If the wife and mother attempts to make her family an integrated part of the community, she must conform to its timing . . ."

It is unrealistic to think of leisure merely in quantitative terms. It is, of course, true that a worker on a rotating shift or night shift or a worker working on Sunday may have quantitatively as much leisure as his fellow worker on a regular schedule, but the *quality* of his leisure will be quite different. Most people simply need leisure when others have it, if social life is not to be impoverished.

What has been said about the effects of irregular work schedules, including Sunday work, applies even more strongly to family life than it does to the life of the general community. If the members of the family are not united by common leisure, family stability is endangered.

Among the important changes in the composition of the labor force in recent years has been the significant increase of the number of employed women. For every one hundred men in the labor force there were twenty

working women in 1890; by 1955 the number of working women per hundred men rose to forty-one. An even more significant development has been the increase in the labor force of married women. Married women coinstituted 52.2 percent of the 1950 female labor force, as compared with 13.5 percent in 1890. Bancroft, *The American Labor Force* (New York 1958, pp. 32-33).

Given the fact that a very high proportion of married women are now employed and are absent from their homes during a substantial part of every week, it has become especially important that there be at least one day during the week which all members of the family can share. In the retail industry, where millions of women are employed, this problem is of prime importance.

3. Juvenile Delinquency, the High Divorce Rate and Other Social Evils Flow From Weak Family Relations. Common, Shared Leisure Time on Sunday Helps to Strengthen the Family as an Institution.

Weakening of family ties is a common source of the problems of juvenile delinquency. For example, in a special study of 966 cases of young delinquents in Boston, Harvard Law School professors Sheldon and Eleanor Glueck found that 48 percent came from broken homes. *One Thousand Juvenile Delinquents*, Cambridge, Mass., Harvard University Press, 1934, pp. 75-77.

The same authors in another study of the family background of 5,000 young offenders, committed to the Massachusetts Reformatory for serious offenses, reported that 60 percent came from broken families. Sheldon and Eleanor Glueck, *Five Hundred Criminal Careers*, Knopf, 1930, pp. 116-18.

The Glueeks' pioneering study of juvenile delinquent shows that a high percentage of delinquent boys came from families which did not share their leisure time: (*Unravelling Juvenile Delinquency,* Harvard University Press, 1950, p. 113.)

> "Not only was there less supervision of the children in the families of the delinquent boys, but there was also *less provision for recreational activities for the family as a group, such as picnicking or going to the beach together, riding in the country, visiting relatives or attending the movies.* Among two-thirds of the families of the delinquents, no group recreation was undertaken by the family as a unit, compared with a third of those of the non-delinquents." (Emphasis added.)

In other words, one of the factors which clearly distinguished the family background of delinquent and non-delinquent boys was the presence or absence of family recreational activities. Sunday is quite naturally the day when the family can share leisure time and enjoy common recreational experiences.

The very high incidence of divorce in the United States in recent years is another well known social problem. The number of divorced persons per 100 married was 0.54 in 1890; by 1949 it had risen to 2.83, representing an increase of 521 percent. The average number of divorces per 100 marriages was 5.56 during the 1881-90 decade, but it rose to 25.89 percent in the 1940-49 decade, an increase of 466 percent. "Statistical Perspectives on Marriage and Divorce," The Annals, November, 1950 vol. 272, pp. 9-21. Today, roughly one marriage in four ends in divorce.

Although no single cause can be singled out to explain these shocking statistics, the irregularity of work-

ing schedules and the denial of opportunities to share leisure time experiences appear to be contributing causes. While "togetherness" has become a fun-poking phrase, the absence of family "togetherness" is universally regarded to be a factor contributing to the disintegration of the American family.

We shall not set forth here the multitude of other social problems which can be traced directly to the loosening of family discipline and family bonds, because the importance of family stability to the mental health of the individual and to the moral health of the community is everywhere agreed upon.

It is respectfully submitted that the findings of social scientists and community relations observers have demonstrated the significant social value of a uniform, community day of rest for American workers and all citizens. By enacting "Sunday closing" laws, state legislatures have exercised their police powers for a legitimate social object and in a manner reasonably calculated to benefit the individual and the community.

IV. CONCLUSION

The Court should affirm the judgment of the court below.

Respectfully submitted,

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